

Appendix E to RFP# 99-36

Pending Approval by the Office of the Attorney General

EDIMS IMAGING SYSTEM CONTRACT

(Contract # 99-37)

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CONTRACT NUMBER _99_-_37

PARTIES

This Contract is entered into by and between the state of Washington, Department of Retirement Systems (DRS), an agency of Washington State government (hereinafter “DRS” or “Purchaser”) located at 6835 Capitol Boulevard, Tumwater, Washington; P.O. Box 48380, Olympia, Washington, 98504-8380, and *[Vendor’s Name]*, a *[corporation/sole proprietor or other business form]* with TIN *[FEIN # or SSN in lieu]* licensed to conduct business in the state of Washington under UBI number *[UBI number]* (hereinafter “Vendor”), located at *[address]* for the purpose of providing a document management, imaging and work-flow solution.

RECITALS

WHEREAS, DRS issued a Request for Proposals, hereinafter “RFP” dated *[Date]*, (Exhibit A) for the purpose of obtaining a system of hardware and software for the imaging, storage and retrieval of documents, in accordance with its authority under Chapter 43.105 RCW; and,

WHEREAS, the *[Vendor’s Name]* submitted a timely proposal to DRS’ RFP (Exhibit B); and,

WHEREAS, DRS evaluated all proposals properly submitted in response to the above-referenced RFP and has identified *[Vendor’s Name]* as the apparently successful Vendor; and,

WHEREAS, DRS has determined that entering into a Contract with *[Vendor’s Name]* will meet the needs of DRS and will be in DRS’ best interest;

NOW THEREFORE, DRS awards to *[Vendor’s Name]* this Contract which shall govern Vendor’s furnishing to DRS the imaging hardware, software and related services indicated in Exhibits A and B, which are incorporated herein by this reference.

IN CONSIDERATION of the mutual promises hereinafter set forth, the parties agree as follows:

DEFINITIONS

1. Definition of Terms

Terms used throughout this Contract shall have the meanings set forth below.

“**Acceptance**” shall mean a written notice from DRS to the Vendor that the Equipment and Software has passed its Acceptance Testing.

“**Acceptance Date**” shall mean the date upon which DRS accepts the Equipment and Software as provided in the sections titled Standard of Performance and Acceptance for Equipment, and Software Standard of Performance and Acceptance Testing.

“**Acceptance Testing**” shall mean the standards to be met by the Equipment and Software prior to Acceptance by DRS, as set forth in the sections titled Standard of Performance and Acceptance for Equipment and Software Standard of Performance and Acceptance Testing.

“Business Days and Hours” shall mean Monday through Friday, 6:00 a.m. to 6:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Contract” shall mean this document, all schedules, exhibits, and amendments hereto.

“Department of Retirement Systems” shall mean the same as “Purchaser”

“Equipment” shall mean the scanner, jukebox and any other Equipment properly added to this Contract, all as set forth in Schedule A - Authorized Product and Price List. **“Equipment Failure”** shall mean a malfunction in the Equipment, excluding external factors, which prevents the accomplishment of the Equipment's intended function(s). If macrocode or Vendor-supplied operating software and/or firmware, residing in the Equipment, is necessary for the proper operation of the Equipment, a failure of such operating software and/or firmware which prevents the accomplishment of the Equipment's intended function(s) shall be deemed to be an Equipment failure.

“Exhibit A” shall mean the Request for Proposal issued by DRS dated [Date].

“Exhibit B” shall mean the Vendor's proposal dated [Date].

“Installation Date” shall mean the date by which all Equipment and Software ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

“Order Document” shall mean any DRS document and attachments thereto specifying the Equipment to be purchased from the Vendor under this Contract.

“Purchaser” shall mean the Department of Retirement Systems, any division, section, office, unit or other entity of DRS or any of the officers or other officials lawfully representing DRS services. **“DRS Contract Administrator”** shall mean that person designated by DRS to administer this Contract on its behalf as further defined in the section titled Purchaser Contract Administrator.

“Purchaser Contracting Officer” shall mean DRS' Chief Financial Officer, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Contracting Officer acting within the limits of his/her authority.

“RFP” shall mean the Request for Proposal used as a solicitation document in this procurement, as well as all amendments and modifications thereto.

“Related Services/Services” shall mean those services provided under this Contract and related to the Equipment and Software being acquired or licensed and the scope of this Contract, and includes such things as installation services, maintenance, training, etc.

“Software” shall mean for all software requested by the RFP, the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor.

“Specifications” shall mean the technical and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Proposal, Exhibit B, collectively.

“Standard of Performance” shall mean the criteria which must be met before Equipment and Software can be accepted by DRS, as set forth in the sections titled Standard of Performance and Acceptance of Equipment and Software Standard of Performance and Acceptance. The Standard of Performance also applies to all additional, replacement or substitute Equipment or Software, and Equipment or Software which is field modified by or with the written approval of Vendor after Acceptance.

“Subcontractor” shall mean one not in the employment of the Vendor, who is performing all or part of the services under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Vendor” shall mean *[Vendor’s Name]*, its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“Vendor’s Account Manager” shall mean a representative of the Vendor who is assigned as the primary contact person whom the DRS Contract Administrator shall work with for the duration of this Contract unless replaced, with advance DRS approval, by another representative.

CONTRACT TERM

2. Contract Term

- 2.1. Initial Contract Term - The initial term of this Contract shall be *eight (8) months*, commencing upon the date of its execution by both parties. The date of execution shall be the date of the signature, latest in time.
 - 2.1.1. Initial Software License Term. Notwithstanding the initial term of this Contract, the initial software license term shall be indefinite, based upon the perpetual license purchased.
 - 2.1.2. Initial Equipment and Software Maintenance Services. The initial term for maintenance of both software and equipment shall be for up to three (3) years commencing one day following expiration of Vendor's provided warranty for each.
- 2.2. Subsequent Contract Terms - The term of this Contract may be extended by three (3) additional one (1) year terms: PROVIDED, the extensions shall be at the option of DRS and shall be effected by written notice of intent to extend this Contract sent to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

3. Survivorship

- 3.1. All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification, and Protection of DRS' Confidential Information shall survive the termination of this Contract.

PROJECT SCOPE

4. General

- 4.1. Vendor agrees to sell and DRS agrees to purchase the Products described in Schedule A (Authorized Product and Price List).
- 4.2. Changes in the scope of the Project which add, delete or alter Deliverables described in Schedule B (Statement of Work and Deliverables) shall be mutually agreed upon by both parties and approved using the Change Order process as specified in this Agreement.

5. Vendor Role and Subcontractors

- 5.1. Vendor shall be responsible for performance of its obligations as described herein, including serving for the Project as the primary Vendor for and integrator of the various components, provided by the Vendor and its Subcontractors, if any. Vendor may, with prior written permission from the Department, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and

obligations. Any such approval may be rescinded for reasonable cause. The Department reserves the right to reject or refuse admission to any Vendor or Subcontractor personnel whose workmanship, in the reasonable judgment of the Department, is deemed to be substandard. Vendor's use of any Subcontractor shall not cause the loss of any warranty from Vendor or any Equipment or component manufacturer.

- 5.2. Vendor shall remain solely responsible and liable to the Department for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to DRS for any breach in the performance of Vendor's duties. Vendor further agrees to indemnify, defend and hold harmless DRS for acts or omissions of its Subcontractor as described in Section 18 of the Contract.
- 5.3. Vendor shall require any Subcontractor to provide DRS and State and federal auditors with access to a Subcontractor's records to the extent necessary to conduct audits. In the event that DRS consents to subcontracting, Vendor shall include in all subcontracts the following provision: "This Agreement is a subcontract under the terms of a prime contract with the State of Washington, Department of Retirement Systems."
- 5.4. In the event DRS consents to subcontracting, all appropriate provisions of this Contract and any amendments thereto shall extend to and be binding upon and inure to the benefit of the successors, assignees, or delegates of the respective parties.

6. Services

6.1. Time is of the Essence

In performing its obligations under this Contract, Vendor understands and agrees that time is of the essence in connection with Vendor's performance under this contract.

6.2. Standards of Work

Vendor represents and warrants that it shall perform all Services required under this Contract in a professional manner, and in accordance with the Specifications set forth in the RFP attached as Exhibit A. Vendor shall re-perform any Services not in compliance with this warranty brought to its attention by DRS within a reasonable time after the applicable Services are performed.

6.3. Necessary Resources

- 6.3.1. Except as specifically provided in this Section, Vendor shall provide the personnel and any other materials and resources necessary for the performance of its Services. DRS shall provide workspace at its facility for all Vendor's staff including reasonable office furniture, supplies, local telephone service, Network Access, and copying as approved by DRS and as necessary for Vendor to perform the Services. Vendor staff must provide all necessary equipment not mentioned in this section.
- 6.3.2. The Vendor shall ensure that its Project staff are on site at the DRS facility in Olympia during the periods specified in the detailed Statement of Work and Deliverables. The Vendor's Project Manager shall be on-site as mutually determined by the Contract Manager and the Vendor's Project Manager to ensure an acceptable level of Project Planning, coordination, and management of the Project.

6.4. Reference Check on Vendor Staff and Subcontractors

Due to the confidential nature of the information and materials which will be accessible to Vendor, DRS may conduct a reference check on Vendor staff or Subcontractors to be used to provide the Services. DRS reserves the right in its sole discretion to reject for reasonable cause any proposed Vendor staff or Subcontractor as a result of information produced by such reference checks.

PRICING, INVOICE and PAYMENT

7. Pricing

- 7.1. The Vendor agrees to provide the Equipment, Software, Software License(s), Maintenance and other Related Services at the costs, rates, and fees set forth below and in the Authorized Product and Price List attached as Schedule A, as specified in the Vendor's proposal dated _____, attached as Exhibit B to this Contract. No other costs, rates, or fees shall be payable to the Vendor.
- 7.2. Equipment Maintenance and Support Fees - Upon expiration of the Vendor-provided warranty as set forth in the section titled Equipment Warranty and upon election by DRS to receive additional maintenance and support services from the Vendor, DRS shall pay maintenance and support fees to the Vendor calculated at one hundred percent (100)% of the Vendor's then current maintenance fee for the Equipment and/or Software: PROVIDED, that maintenance and support fee increases shall be capped at five percent (5)% annually from one year to the next and may only be increased on the anniversary of the Execution Date of this Contract.
- 7.3. Software Maintenance and Support Fees - Upon expiration of the Vendor-provided warranty as set forth in the section titled Vendor Commitments, Warranties and Representations and upon election by DRS to receive maintenance and support Services from the Vendor, DRS shall pay maintenance and support fees to the Vendor calculated at one hundred percent (100)% of the Vendor's then current license fee for the Software product OR \$ _____ or other reasonable amount/method: PROVIDED THAT, Software maintenance and support fee increases shall be capped at five percent (5)% annually from one year to the next and may only be increased on the anniversary of the Execution Date of this Contract.
 - 7.3.1. Upgrade Fees - Vendor agrees not to charge DRS any upgrade fees.
- 7.4. Such costs, rates, and fees may not be increased during the term of this Contract, except as explicitly authorized by terms elsewhere in this contract.
- 7.5. If the Vendor reduces its list prices for any of the Equipment, Software, Maintenance or Related Services during the term of this Contract, DRS shall have the immediate benefit of such lower prices and rates for new purchases. Vendor shall send notice to the DRS Contract Administrator with the reduced list prices within fifteen (15) business days of the reduction taking effect, and Vendor shall send updated price lists to the DRS quarterly.
- 7.6. At least 120 calendar days before the end of the then current term of this Contract, the Vendor may propose purchase price and maintenance and support (service) rate increases by written notice to the DRS Contract Administrator. The proposed fixed cost price and/or rate increases shall not be inconsistent with the other terms of this Contract or the RFP regarding future rate increases. Price adjustments will be taken into consideration by the DRS Contract Administrator when determining whether to extend this Contract.

8. Advance Payment Prohibited

No advance payment shall be made for the Equipment, Software and Related Services furnished by Vendor pursuant to this Contract. At DRS' discretion, maintenance payments, if any, may be exempted from this limitation.

9. Taxes

DRS will pay sales and use taxes imposed on the Equipment, Software or Related Services acquired hereunder. The Vendor will pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal

property to which DRS does not hold title. DRS, as an agency of the Washington State Government, is exempt from property tax.

10. Invoice and Payment

- 10.1. The Vendor will submit properly itemized invoices and/or vouchers to DRS. All invoices submitted must meet with the approval of the Contract Manager or his or her designee prior to payment. Vendor shall not submit invoices for Deliverables, or their associates' Services (sub-contractors or third-party providers) until receipt of notice from DRS that Acceptance has occurred. Invoices must reference this Agreement and shall provide and itemize, as applicable:
 - a) Contract number 99 – 37
 - b) Professional services
 - c) Description of equipment, including quantity ordered, model and serial numbers;
 - d) Software License
 - e) Date of delivery and/or date of installation and set up;
 - f) Vendor's list price for each item;
 - g) Applicable discounts;
 - h) Monthly maintenance charges;
 - i) Net invoice price for each item;
 - j) Applicable taxes;
 - k) Shipping costs;
 - l) Other applicable charges;
 - m) Total invoice price; and
 - n) Payment terms including any available prompt payment discounts.
- 10.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and acceptance of such Equipment, Software, or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 10.3. Incorrect or incomplete invoices will be returned by DRS to the Vendor for correction and reissuance.
- 10.4. This Contract number 99 – 37 must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. DRS shall not honor drafts, nor accept goods on a sight draft basis.
- 10.5. If DRS fails to make timely payment, Vendor may invoice DRS one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or Software or Delivery of related services, or receipt of Vendor's properly prepared invoice, whichever is later.

11. Withholding Payments

- 11.1. DRS shall have the right to withhold any and all payments due hereunder (including payments due for Deliverables for which Acceptance has been previously provided, but payment not yet made, and for Deliverables which have not been accepted) if Vendor fails to deliver any of the Deliverables or to provide Services which satisfy Vendor's obligations hereunder.
- 11.2. DRS may also withhold from any amounts due Vendor such sum as the Department determines to be necessary to protect DRS against potential loss or liability. DRS may withhold all or any such moneys

due and payable to Vendor after notice is provided to the Vendor, without penalty, until such Failure to perform is cured or otherwise adjudicated.

- 11.3. DRS will also withhold 10% of the Purchase Price, including any incentive funds, for each Deliverable. Upon Acceptance of the Final System, DRS shall pay the amount withheld for each previous Deliverable for which DRS has given its Acceptance in accordance with the terms of Section ?? below.

12. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to DRS the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

PROJECT MANAGEMENT ADMINISTRATION

13. Project Plans

- 13.1. Statement of Work and Deliverables. Vendor shall revise the Project Statement of Work submitted in the Response, which is included in Exhibit B with DRS's collaboration to reflect Project changes and/or additional detail since its initial submission. The revised Project Statement of Work and Deliverables submitted prior to the Effective Date includes all tasks expected of both the Vendor and DRS. The revised Project Statement of Work and Deliverables is hereby attached and incorporated into this agreement by reference.
- 13.2. Project Statement of Work Updates. Vendor shall update the Statement of Work and Deliverables regularly (no less than biweekly) and as otherwise necessary throughout the Project to accurately reflect the status of milestones,
- 13.3. Activities, tasks, events and Services, subject to agreement by DRS on such updates. Any changes or updates to the Statement of Work that affect the dates for any of the Deliverables must be agreed upon in writing by both parties.

14. Reports

All Reports shall be produced in formats approved by DRS and delivered in accordance with the timeframes set forth in the Project Statement of Work and Deliverables and the terms of this Contract.

15. Reporting Requirements

During the term of this Agreement, Vendor shall produce the Reports and the parties shall participate in the meetings described below.

- 15.1. Weekly Meetings or Conference Calls. Vendor's Project Manager or designee shall participate in weekly meetings or conference calls with the Contract Manager. These weekly meetings or conference calls shall follow an agenda jointly prepared by the Contract Manager and Vendor's Project Manager, but will also allow both Vendor and DRS to discuss other issues that may concern either party.
- 15.2. Weekly Status Reports. Brief written status Reports shall be provided by Vendor which describe the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, and any problems that may have arisen and that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for the status Reports shall be subject to DRS's approval.
 - 15.2.1. Status Report and Meetings. Vendor's Project Manager, along with appropriate Vendor's representatives shall attend status meetings as requested by DRS with the Contract Manager and

selected DRS executives. In preparation for such meetings, Vendor shall submit a status Report which will be due in the Contract Manager's office no later than two working days prior to any scheduled meeting during the term of the Contract. The narrative portion of the Report will address, at a minimum, the following:

- 15.2.2. Overall status of the project in reference to the Project Statement of Work and Deliverables;
 - 15.2.3. Deliverable status;
 - 15.2.4. Problems and issues encountered and actual resolutions;
 - 15.2.5. Proposed changes to the Project Statement of Work and Deliverables
- 15.3. Special Reports. As reasonably requested by DRS, Vendor's Project Manager shall assist the Contract Manager in preparing special briefing Reports.

16. Vendor Project Manager

Vendor will assign to this Contract as Vendor's Project Manager an individual of a management level sufficient to assure timely responses from all Vendor personnel. Vendor agrees and represents that Vendor's Project Manager will be fully qualified to perform the tasks required of that position under this Contract. Vendor's Project Manager shall be responsible for acting as a liaison with the Contract Manager and shall function as Vendor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. Vendor's Project Manager shall be able to make binding decisions pursuant to this Contract for Vendor. If Vendor's Project Manager is removed, replaced or terminated, or terminates his or her employment with the Vendor, Vendor will promptly provide notice to the Department, submit a resume and seek and obtain the Contract Manager's written approval of the replacement Project Manager prior to Vendor's replacement of the prior Vendor's Project Manager.

17. Vendor Project Staff

- 17.1. A list of the Vendor's Project team, including names, roles and resumes of key Project participants, is to be included within Exhibit B. Vendor will also provide to DRS the specific job description for Vendor's key Project positions.
- 17.2. Staffing commitments made in Exhibit B shall not be changed without the prior written approval of DRS, subject to such staff's completely leaving Vendor and its affiliated organizations without DRS's approval for reasons outside Vendor's reasonable control, e.g. due to retirement, illness or leaving for a job at a new, unaffiliated company. Staffing will include the named key individuals at the levels of effort proposed. Vendor must receive DRS's prior written approval for any permanent or temporary changes to or deletions from Vendor's named management, supervisory, and professional personnel, subject to such staff's leaving Vendor and its affiliated organizations without the Department's approval for reasons outside the Vendor's reasonable control.
- 17.3. During the term of this Contract, DRS reserves the right to approve or disapprove Vendor's and any Subcontractor's staff assigned in the Contract, to approve or disapprove any proposed changes in staff, or to require the removal or reassignment of any Vendor or Subcontractor staff found unacceptable by DRS.

18. Vendor Contract Manager

Vendor's point of contact in matters of Project management will be the Contract Manager or her or his designee. In her or his Project management role, the Contract Manager will be responsible for supervision of all tasks identified in the RFP, the Proposal, and Project Statement of Work and Deliverables, including the following:

- 18.1. Coordinating the reporting, review and quality assurance process;
- 18.2. Facilitating the effective participation of State staff;
- 18.3. Resolving questions raised by Vendor requiring clarification of DRS requirements, policies, and procedures;
- 18.4. Administering and managing the Contract;
- 18.5. Monitoring the progress of all principal Project participants, including Vendor and other State entities;
- 18.6. Providing Acceptance for all Deliverables and approving payments; and
- 18.7. Facilitating the timely resolution of issues raised by principal Project participants.

19. Supplemental Contracts

DRS may undertake or award contracts for work related to the Contract, or any portion thereof. Vendor shall cooperate with such other vendors and DRS in all such cases. Vendor will ensure that all Subcontractors will abide by this provision.

DELIVERABLES

20. General

Vendor shall provide DRS with the Deliverables and sub-deliverables described in **Exhibit B, Schedule B** and this agreement. Vendor shall utilize the Vendor's expert knowledge, the Vendor's own Response for Proposal, and this Agreement as the basis of the Deliverables. Vendor shall retain backup copies in writing and on electronic media where appropriate of all Deliverables until 60 days after Acceptance and shall provide the Department on its request with a copy thereof until that time, at no additional cost. Vendor shall deliver all Deliverables to the Contract Manager at DRS's headquarters at 6835 Capitol Boulevard, Tumwater, Washington, 98501. Where applicable, such Deliverables shall be delivered in hard copy form in the number of copies designated by the Department and on electronic media and in formats designated by the Department.

- 20.1. Acceptance Procedures – General. DRS shall, at its sole discretion, determine whether each Deliverable and then the System as a whole meet the specified Acceptance criteria. DRS will not have accepted any Deliverable or the System until each meets the Acceptance criteria set forth in the RFP including, but not limited to, Section ?? entitled "System Acceptance and Appendix ?? to the RFP entitled "Acceptance Testing." DRS will notify the Vendor, in writing, after each submitted Deliverable has met the above-referenced standards of performance and the Specifications and receives the Department's Acceptance.
- 20.2. Equipment and Software Use Training - At the time of installation of the Equipment and Software, whichever is later, the Vendor will provide training. Such training shall be sufficiently thorough to instruct, and certify, if required, such staff in the use of the Equipment and Software. This will include, as a minimum, user training (full client and web client), system administrator training, applications development training. Initial training shall be completed in time for the staff to operate the Equipment and Software in the required fashion with minimum Vendor aid.
 - 20.2.1. The starting dates of the training will be as agreed by the parties.
 - 20.2.2. The training fees, whether separately stated under the pricing sections of this Contract or included in the cost of the Equipment and/or Software, shall cover all costs of training. DRS shall not be responsible for any additional Vendor costs for training required pursuant to this section.

- 20.3. DRS shall have the right, so long as the Software licensed and the Equipment purchased hereunder are in use by DRS, to give instruction to DRS' personnel in all courses described above and all revisions thereto without charge, using materials supplied by the Vendor. Such use by DRS of Vendor's materials shall include the right to reproduce the same solely for the permitted use, which use and reproduction shall not be deemed to violate or infringe upon any patent, copyright, or other proprietary right of the Vendor.
- 20.4. Vendor agrees to provide the Hardware, Software and Related Services described in the Statement of Work and Deliverables, attached as Schedule B to this contract for the provision of an Electronic Document Image Management System as described in DRS' RFP and the Vendor's proposal attached as Exhibits A and B to this contract..

CHANGE ORDERS

21. Changes Within the Scope

21.1. Changes Within the Scope

Either party may, at any time by a written Change Order, request a change within the scope of the Contract. Such changes may include without limitation modification of technical Specifications, procedures, Documentation, Services or Application Software.

21.2. Mandated Changes and Corrections

21.2.1. DRS may, at any time by a written Change Order, make changes to the System required in DRS's judgment by new Federal or State law or regulation that require additional resources or an accelerated schedule. DRS will issue a Change Order to Vendor specifying the scope of the change and expected completion date. The Change Order shall be subjected to the same terms and conditions of the Contract unless otherwise specified in the Change Order and Agreed upon between both parties.

21.2.2. However, correction of any Failures and full implementation of all systems capabilities in accordance with the Specifications, including those resulting from a Change Order, are the Vendor's responsibility to provide without additional charge.

21.2.3. Response

Either party shall respond in writing to a Change Order request within ten working days of receipt. If DRS has initiated the change order, then the Vendor shall advise DRS of any cost and schedule impacts. When there is a cost impact, i.e., increase or decrease in Charges, Vendor shall advise the Department in writing of the increase or decrease involved, including a breakdown of the number of staff hours by level of personnel needed to effect this change.

21.3. Agreement

Vendor, Contract Manager and Contracting Officer shall negotiate in good faith and in a timely manner as to the price and the impact on the Schedule of any Change Orders. If the parties reach an agreement in writing, the terms hereof shall be modified accordingly.

21.4. Disagreement

If the parties are unable to reach an agreement in writing within ten working days of the Vendor's Response to a Change Order, the Contract Manager and the Contracting Officer may make a determination of the revised price and Schedule, and the Vendor shall proceed with the work according to such price and schedule, subject to the Vendor's right to appeal the determination of the price and/or Schedule pursuant to Section???. Nothing in this Section shall in any manner excuse Vendor from proceeding diligently with the Contract, as changed by the Change Order.

21.5. Termination

If Vendor fails or refuses to perform its Services pursuant to a Change Order, Vendor shall be in material breach of this Contract, and DRS shall have the right to terminate this Contract for such a breach.

21.6. Preparation of Change Orders

Vendor shall not charge DRS for time spent preparing Change Orders.

22. Changes Outside the Scope

Changes outside of the scope of this Contract will be effective only when mutually agreed upon by the parties and a written Amendment is executed by authorized representatives of each party.

VENDOR'S RESPONSIBILITIES

23. Title and Ownership of Equipment, Software and Other Work Products

23.1. Software License Grant - Vendor grants to DRS a non-exclusive, royalty free, non-transferable perpetual license to use the Software and related documentation according to the terms and conditions of this Contract. DRS may modify any Vendor application Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, the Vendor application Software will be removed from the derivative work and, at DRS' option, either destroyed or returned to Vendor. Should DRS modify the software installed by xxx, xxx will not be responsible for maintenance and support of the said software to the extent that it is affected by the modification.

23.1.1. DRS will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party.

23.1.2. DRS may copy each item of Software to multiple hard drives.

23.1.3. DRS will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. DRS may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

23.1.4. The initial license term for all Software provided pursuant to this contract shall be perpetual.

23.1.5. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, DRS shall have rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

23.1.6. Vendor understands that DRS may provide information-processing services to other users that are customers of DRS, such as state and local governments and other political subdivisions and tax supported entities. Software delivered hereunder may be used in the delivery of these Services. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein.

23.1.7. DRS may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

23.1.8. Vendor, as Licensor, hereby warrants and represents to DRS as licensee that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to DRS the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any

third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

- 23.1.9. Vendor shall maintain all title, copyright, and other proprietary rights in the Software. DRS does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.
- 23.1.10. Source Code Escrow. DRS may, at its sole discretion, require the Vendor to enter into a Source Code Escrow Agreement for those products which DRS considers critical. Specific terms and conditions, as well as pricing, shall be negotiated between DRS, Vendor and Escrow Agent.
- 23.2. [Note to Vendors: Should DRS deem it necessary to enter into an escrow agreement, the specific terms and conditions of that agreement would be similar to the terms and conditions set forth here:
- 23.3. Source Code Escrow Package Definition. The term “Source Code Escrow Package” shall mean the following:
- (a) *A complete copy in machine-readable form of the source code and executable code of the Licensed Software;*
 - (b) *A complete copy of any existing design documentation and user documentation; and/or*
 - (c) *Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.*
- 23.4. Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to the Escrow Agent, provided that Vendor, DRS and Escrow Agent shall first enter into a supplementary escrow agreement titled Escrow Contract. Vendor and DRS shall use their best efforts to enter into such an Escrow Contract as soon as possible after the date of this Contract, but not later than [thirty (30) days or other reasonable time, including consideration of whether the Escrow Contract should be entered into at the same time as this contract].
- 23.5. Delivery of New Source Code into Escrow. When and if, from time-to-time during the term of this Contract, term of license or term of maintenance and support Services, Vendor provides DRS with a maintenance release or upgrade version of the Licensed Software, Vendor shall within ten (10) business days thereafter deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and give DRS notice of such delivery.
- 23.6. Verification of Source Code Escrow Package. DRS, at its option and expense, may request that the completeness and accuracy of any Source Code Escrow Package be verified.
- 23.6.1. Such verification may be requested once per Source Code Escrow Package.
 - 23.6.2. Such verification will be conducted by the Escrow Agent or, upon at least ten (10) business days prior notice to Vendor, by another party (the “Verifier”) reasonably acceptable to Vendor (after full disclosure to Vendor of information reasonably requested by Vendor about the Verifier).
 - 23.6.3. Prior to conducting the verification, the Verifier shall first execute a form of confidentiality agreement prepared by Vendor and precluding the Verifier from disclosing any information about the source Code Escrow Package to DRS other than whether the Source Code Escrow Package was found to be complete and accurate.
 - 23.6.4. Unless otherwise agreed at the time by Vendor and DRS, verification will be performed on-site at Vendor’s premises, utilizing Vendor’s equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification.
 - 23.6.5. Vendor may at its discretion designate a representative to accompany the Source Code Escrow

Package at all times, and to be present at the verification. The Verifier will be DRS' sole representative at the verification.

- 23.6.6. The responsibility for the completeness and accuracy of the verification will be solely that of the Verifier. Neither the Escrow Agent, if different from Verifier, nor Vendor shall have any responsibility or liability to DRS for any incompleteness or inaccuracy of any verification.

23.7. Escrow Fees. All fees and expenses charged by the Escrow Agent will be borne by Vendor.

23.8. Release Events for Source Code Escrow Package. The Source Code Escrow Package may be released from escrow to DRS, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events" defined below:

- 23.8.1. The Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;
- 23.8.2. the Vendor has wound up or liquidated its business voluntarily or otherwise and the State has compelling reasons to believe that such events will cause the Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- 23.8.3. The Vendor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its warranties and maintenance obligations.

23.9. Release Event Procedures. If DRS desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Escrow Release Event, then:

- 23.9.1. DRS shall comply with the procedures set forth in the Escrow Contract to document the occurrence of the Release Event;
- 23.9.2. DRS shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the section in this Contract titled, Vendor's Proprietary Information;
- 23.9.3. If the release is a temporary one, then DRS shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and
- 23.9.4. DRS shall promptly respond, fully and completely, to any and all requests for information from Vendor concerning DRS' use or contemplated use of the Source Code Escrow Package.]

23.10. Equipment Title - Upon successful completion of Acceptance Testing and receipt of DRS' letter of Acceptance, the Vendor shall convey to DRS good title to the Equipment, excluding licensed software, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. Transfer of title to the Equipment does not include transfer of title to Vendor's Software. Software offered by Vendor under this Contract is offered only under a license-to-use, as defined in the sections titled "Equipment and Maintenance and Documentation" and "Software License Grant".

23.11. Purchased Services

- 23.11.1. Related Services shall be performed pursuant to the specifications set forth in DRS's solicitation document(s) and the terms and conditions of the agreement between them, which incorporate by reference terms and conditions of this Agreement. Future Statements of Work executed by DRS and Vendor for Purchased Services will designate the project or task objectives, scope of work to be performed, deliverables to be provided, Vendor's roles and responsibilities, DRS' roles and responsibilities, desired start and stop dates, primary work site, a list of necessary materials, the maximum cost for the Purchased Services, and any other special requirements.

23.11.2. Unless otherwise provided, data which originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by DRS. Data shall include, but

not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

- 23.11.3. Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to DRS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, that such license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable effort to advise DRS, at the time of delivery of data furnished under this Contract, of all known or potential infringements of privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. DRS shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any data delivered under this Contract. DRS shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.
- 23.11.4. Vendor shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of DRS. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subvendors shall not copy or duplicate any programs or work products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

24. Equipment and Software Delivery

- 24.1. The Vendor shall deliver the Equipment and Software ordered pursuant to this Contract on or before [date]. Professional Services under the terms of this contract will be completed on or before [date]. For any exception to this Delivery Date, the Vendor must notify DRS and obtain prior approval in writing.
- 24.2. All Equipment deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from DRS, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip which identifies all items included with the shipment and DRS' Contract number. The Vendor's delivery receipt must be signed by an authorized representative of DRS for all deliveries made hereunder.
- 24.3. All deliveries of Equipment and Software must be made at 6835 Capitol Boulevard, Tumwater, WA 98501 and must be prearranged with the DRS Contract Administrator.

25. Risk of Loss and Shipping

The Vendor shall ship all Equipment purchased or Software licensed pursuant to this Contract, freight prepaid, FOB DRS' destination. The method of shipment shall be consistent with the nature of the Equipment or Software and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Equipment ordered or Software licensed, hereunder which occurs prior to Acceptance, except loss or damage attributable to DRS' fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by DRS, except loss or damage attributable to the Vendor's fault or negligence.

26. Vendor Equipment and Software Installation and Set-up

- 26.1. The Vendor shall install the Equipment, ready for Acceptance Testing, on or before the Installation Date(s) [specified in the RFP or name the date]. Failure to meet the Installation Date(s) may subject

the Vendor to damages and/or termination of this Contract and/or other damages available under law, unless acts or omissions of DRS cause such failure.

- 26.2. After installing the Equipment, the Vendor shall provide DRS with documentation of a successful system audit, performed at DRS' installation site using Vendor's diagnostic routines, as approved by DRS, which demonstrates that the Equipment meets or exceeds the technical and other Equipment specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Proposal, Exhibit B, which collectively shall be called the "Specifications." Vendor shall certify to DRS in writing that the Equipment is ready for Acceptance Testing. If after reviewing such documentation DRS agrees that the Equipment is ready for Acceptance Testing, DRS shall begin Acceptance Testing, as set forth in section titled Standard of Performance and Acceptance for Equipment.
- 26.3. DRS shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in Exhibit B, as modified in writing and agreed to by the parties. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to DRS apart from the costs presented in Vendor's Response. Any requirements for the environment not disclosed in Vendor's Response will be completed by Vendor at no additional cost to DRS.
- 26.4. Vendor shall install the Licensed Software on DRS' designated computer system(s) in accordance with the requirements set forth in the RFP or as otherwise agreed in writing by the parties.

27. Equipment Specifications/Configurations

- 27.1. Each item of Equipment, component, or feature thereof delivered hereunder will conform to the detailed specification of said item, as set forth in the Vendor's proposal, in all respects including, but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties.
- 27.2. The Equipment, components, or features purchased hereunder, for the purpose of delivery and performance under this Contract, shall be grouped together in one or more Equipment, firmware, and/or software configurations as set forth in the Vendor's proposal.
 - 27.2.1. Any such configuration shall be deemed incomplete and undeliverable if any item of Equipment, component, or feature thereof within that configuration has not been delivered, or if delivered, not installed or operational in accordance with the Equipment Delivery and Vendor Installation and Set-up sections of this Contract.
 - 27.2.2. Any such configuration shall be deemed not Accepted if any item of Equipment, component, or feature thereof within that configuration is deemed not acceptable in accordance with the Standard of Performance and Acceptance for Equipment section of this Contract.
- 27.3. DRS shall have the right to connect the Equipment purchased hereunder to any Equipment manufactured or supplied by others, including other computers, peripheral Equipment, terminal devices, communications Equipment, software and the like which interface with the Equipment purchased hereunder. Vendor shall be relieved of warranty and service obligations to the extent the operation of the installed equipment is affected by those connections.
 - 27.3.1. The Vendor shall supply any required interface devices, proprietary to the Vendor, as described in published Vendor manuals at the then current price. Said price shall be subject to any price protection sections in this Contract.
- 27.4. If requested by DRS, the Vendor agrees to identify, on all items of Equipment, components, or features thereof supplied under this Contract, all appropriate test points for connecting commercially available Equipment monitors designed to measure system capacity, performance, or activity.

28. Standard of Performance and Acceptance for Equipment

- 28.1. This section establishes a Standard of Performance which must be met before any Equipment is accepted by DRS. It is also applicable to any additional, replacement or substitute Equipment and Equipment which is field modified by or with the written approval of Vendor after its Acceptance.
- 28.2. The Standard of Performance is defined as 100% effectiveness level of operation in conformance with the current published specifications and demonstrated capabilities, the RFP requirements, and Vendor's proposal for the initial period of Acceptance Testing, defined as a period of thirty (30) consecutive calendar days, starting from the day after the Equipment has been installed and certified by the Vendor as ready for Acceptance Testing. DRS will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 28.3. The effectiveness level for Equipment is a percentage figure determined by dividing the operational use time of the Equipment by the sum of that time plus equipment failure downtime, all of which shall be measured in hours and whole minutes. Operational use time for Equipment is defined as the accumulated time during which the Equipment is in actual use, which shall be at least ninety-nine percent (99%) for the prime shift, Monday through Friday, 6:00 a.m. - 6:00 p.m. Equipment failure downtime is that period of time when work cannot be processed or completed because of malfunctioning Equipment or Vendor Supplied Software. Vendor Supplied Software shall mean that software which is sold with and is integral to the Equipment's operation. Downtime for each incident shall start from the time DRS makes a bona fide attempt to contact the Vendor's designated representative at the prearranged contact point until the Equipment is returned to DRS fully operational in conformance with the Specifications. During periods of Equipment downtime, DRS may use operable Equipment when such action does not interfere with maintenance of the inoperable Equipment.
- 28.4. In the event the Equipment does not meet the Standard of Performance during the initial period of Acceptance Testing, DRS may, at its discretion, continue on a day-to-day basis until the Standard of Performance is met. If the Equipment still has not met the Standard of Performance DRS may, at its option: (1) declare the Vendor to be in breach and terminate this Contract; or, (2) demand replacement Equipment from the Vendor at no additional cost to DRS; or, (3) continue the Acceptance Testing for an additional thirty (30) calendar days. The Vendor shall pay all costs related to the preparation and shipping for Equipment returned pursuant to this section. DRS' option to declare the Vendor in breach and terminate this Contract shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 28.5. Equipment shall not be Accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first DRS business day following the successful Acceptance Testing period, and shall be formalized in a letter of Acceptance from DRS to the Vendor.
- 28.6. Monthly Performance Monitoring - Throughout the initial and subsequent maintenance terms of this Contract, DRS shall monitor the effectiveness level of the purchased Equipment, on a monthly basis, to ensure the Equipment operates at the effectiveness level as established in this Standard of Performance and Acceptance of Equipment section. Failure of Vendor to provide the Equipment effectiveness level established in this section throughout the initial and subsequent maintenance terms of this Contract will require Vendor to take corrective action, as directed by DRS.
- 28.7. Maintenance Charges - Maintenance charges shall apply following expiration of Vendor's provided warranty.

29. Equipment Warranty

- 29.1. The Vendor warrants that the Equipment, when installed, shall be in good operating condition and shall conform to the Specifications and other materials provided to DRS as set forth in the section titled

Vendor Commitments, Representations, and Warranties, at the time of Acceptance by DRS and for a period of one (1) year commencing upon the first day after Acceptance. Vendor further warrants that the Equipment conforms to all mandatory requirements set forth in Exhibit A and all representations contained in the proposal Vendor submitted in response thereto.

- 29.2. Within two (2) business days of notification from DRS, Vendor shall adjust, repair or replace all Equipment that is defective or not performing in conformance with the Specifications. The Vendor shall assume all costs for replacing parts or units and their installation, including transportation and delivery fees, if any.
- 29.3. The Vendor shall also provide a toll-free telephone service "hotline" to allow DRS to report Equipment failures and problems to be remedied by the Vendor. Any defective Equipment must be repaired or replaced for DRS so that it conforms to the Specifications.
- 29.4. Vendor agrees that all warranty service it provides hereunder shall be performed by manufacturer trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has and will obtain and pass through to DRS any and all warranties obtained or available from the original Equipment manufacturer, including any replacement, upgraded, or additional Equipment warranties.
- 29.5. DRS agrees that the Vendor will not be liable for any damages caused by DRS' actions or failure of DRS to fulfill any of its responsibilities for site installation. In the event of DRS being unable to fulfill its responsibilities regarding site installation, Vendor is excused from performance.
- 29.6. The remedies listed above in Section 28 are the sole remedies of DRS for failure of the equipment to perform under the terms and conditions of this contract. **THE WARRANTIES IN THIS CONTRACT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.**

30. Equipment Maintenance and Support Services

Vendor agrees that, for purchased Equipment, Vendor will, at the sole option of DRS, and consistent with the Contract Term section, maintain the Equipment to original performance specifications, or current standards with DRS' prior written permission, and in accordance with the following maintenance terms and conditions after the warranty period of any Equipment purchased pursuant to this Contract, provided that said Equipment has been continuously maintained by the Vendor, or the Vendor's authorized Subcontractor, since its Acceptance.

- 30.1. The Vendor shall keep the Equipment in good operating condition or restore it to good working order in accordance with Vendor's official published specifications. Vendor shall provide contracted maintenance support twelve (12) hours per day, five (5) days per week, every day of the year excluding all DRS recognized holidays. If Vendor holidays differ from DRS' scheduled holidays, Vendor has so notified DRS in writing in advance of executing this Contract.
 - 30.1.1. DRS shall provide the Vendor access to the Equipment to perform maintenance service.
 - 30.1.2. The Vendor shall specify in writing, for each machine, the number of hours it requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor supplied information DRS shall develop and provide to the Vendor in writing the schedule within which the Vendor shall provide preventive maintenance. This schedule may be modified by mutual agreement. In addition, preventive maintenance may be performed at a time convenient to DRS within or contiguous with remedial maintenance.
 - 30.1.3. Remedial maintenance shall be performed within four (4) business hours after notification that Equipment is malfunctioning or inoperative. The Vendor shall provide DRS with a designated point of contact and shall make arrangements to enable a maintenance representative to receive

such notification.

30.1.4. The Vendor shall furnish a maintenance activity report to DRS upon completion of each maintenance call. The report shall include, as a minimum, the following:

- a) Date and time notified;
- b) Date and time of arrival;
- c) Type and serial number(s) of machine(s);
- d) Time spent for repair;
- e) Description of malfunction;
- f) List of parts replaced; and
- g) Additional charges, if applicable.

30.1.5. There shall be no additional maintenance charges for:

- a) Preventive maintenance, regardless of when performed;
- b) Remedial maintenance which was begun during the principal period of maintenance or extension thereof or when the Vendor was notified during the principal period of maintenance or extension thereof of the need for remedial maintenance;
- c) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
- d) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material; nor
- e) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.

30.1.6. Malfunctioning Equipment must be repaired or a replacement spare installed by the Vendor's qualified field engineer no later than the close of business, one business day following notification of Equipment malfunction. Failure of the Vendor to comply with this requirement shall be deemed a Failure to Perform.

30.2. Guaranteed Response Time

30.2.1. For the term of maintenance service contracted for herein, the Vendor shall provide DRS with a guaranteed four (4) hours maintenance response time for the Equipment purchased hereunder. Within four (4) hours after notification by DRS to a prearranged contact point for reporting such problems, that DRS is experiencing equipment or software problem(s), Vendor's qualified field engineer shall arrive at DRS' location to correct such problem. This guaranteed response service shall be available to DRS five (5) business days each week, excluding Washington State holidays.

30.2.2. Except for causes beyond the control of the Vendor, if Vendor's maintenance personnel fail to arrive at DRS' installation site within four (4) hours, DRS will deem this a Failure to Perform.

30.2.3. Maintenance Credits For Equipment Malfunction

30.2.4. Downtime shall be defined and computed in the same manner as provided for in the Standard of Performance and Acceptance sections of this Contract. The credit granted by Vendor shall be _____% of the monthly maintenance fee for each percentage point a machine falls below its effectiveness level. *[To be negotiated.]*

30.2.5. If for two consecutive months the Equipment fails to operate at an effectiveness level of ninety-nine percent (99%), then DRS will require Vendor to take corrective action to remedy the non-performance in accordance with the Equipment Warranty sections of this Contract.

- 30.3. Maintenance Outside Covered Period For Purchased Machines - Should DRS require maintenance service outside the contracted maintenance terms established herein, such services shall be performed at the Vendor's applicable hourly rates and terms then in effect.
- 30.4. If the interconnectivity requirements provided in the section titled Equipment Specifications/Configurations cause an increase in the support price for maintenance, such increase shall be negotiated between the parties.

31. Equipment and Maintenance Documentation

- 31.1. Vendor agrees to provide comprehensive technical and user guides for Equipment purchased by DRS, at no additional cost, if this complies with Vendor's standard policies, or at Vendor's then current prices less applied discounts established under this Contract.
- 31.2. Vendor agrees to provide maintenance documents and service manuals for Equipment purchased by DRS, at no additional cost, if this complies with Vendor's standard policies, or at Vendor's then current prices less applied discounts established under this Contract. Vendor also agrees to forward all updates and revisions to maintenance documents, drawings and service manuals to DRS for each item of Equipment ordered, at no additional cost, if this complies with Vendor's standard policies, or with DRS' permission, at Vendor's then current prices less applied discounts established under this Contract.
- 31.3. Vendor agrees that equipment and maintenance documentation, as with other materials provided under this contract, are subject to the public disclosure laws stated in the section titled Vendor's Proprietary Information.

32. Spare Parts for Equipment

Vendor shall make available original Equipment manufacturer replacement parts, or DRS approved equivalent, for a minimum of five (5) years from the date of the initial delivery to DRS. In the event that the availability of these parts from the manufacturer may restrict the Vendor from providing parts or spares, all attempts will be made to provide a like or similar functioning product by the Vendor in order to satisfy this demand. Vendor further agrees to offer a reasonably priced parts purchase and exchange program to DRS.

33. Engineering Changes – Equipment and Software

Vendor warrants that installation of any engineering changes as Vendor may from time to time require or recommend shall not cause the performance of the Equipment or Software modified to be materially degraded below the Specifications at the time of installation of the same. Any such changes will be installed at a mutually agreed upon time. Engineering changes will not decrease or cancel any Vendor commitment, warranty or representation.

34. Software Specifications

Software Specifications are listed and described in the RFP and the Vendor's proposal attached hereto as Exhibits A and B, and by this reference made a part hereof, as though completely set forth herein. Vendor warrants that products delivered hereunder shall perform in accordance with these specifications.

35. Software Standard of Performance and Acceptance Testing

- 35.1. During Performance (and Acceptance) Testing, as defined in this section, DRS shall conduct tests as it deems appropriate concerning whether the Licensed Software appears to be capable of being effectively utilized in DRS' operating environment.

- 35.2. The Performance Testing shall commence on a date mutually agreed upon by DRS and Vendor after installation of the Licensed Software by Vendor.
- 35.3. Subject to possible extensions as indicated below, the Performance Testing shall end 30 calendar days after testing commences.
- 35.4. The Performance Testing may be extended in accordance with the following procedures:
- 35.4.1. If DRS determines, at its reasonable discretion at any time prior to the end of the Performance Testing period, that the Licensed Software appears to be deficient or unsuitable for DRS' use for any reason, then DRS may, at its discretion, promptly notify Vendor, specifying in the notice the respects in which the Licensed Software is deemed to be deficient or unsuitable.
 - 35.4.2. If DRS gives such notice to Vendor during the period beginning five (5) business days prior to the expiration of the Performance Testing period, then the expiration of the Performance Testing will be postponed for five (5) business days to permit Vendor to evaluate the reported deficiency or unsuitability, unless otherwise specified in DRS' notice.
- 35.5. If the parties agree to extend the Performance Testing to permit Vendor to correct deficiencies, then the Performance Testing period will be extended by the lesser of: (a) the amount of time actually taken by Vendor to deliver a corrected version, or (b) any maximum amount of time agreed to by Vendor and DRS.
- 35.6. DRS may: (a) accept the Licensed Software subject to the terms and conditions of this Contract or (b) at its reasonable discretion, reject the Licensed Software if it fails to conform to the Specifications in the Contract, RFP, and/or Vendor's proposal, in either case by notice to the Vendor at any time during the Performance Testing period. The date, if any, on which DRS accepts the Licensed Software is referred to as the "Acceptance Date."
- 35.7. The Warranty and Maintenance periods shall begin on the Acceptance Date.

36. Software Upgrades and Enhancements

- 36.1. Vendor shall supply, at no added cost, updated versions of the Software including right of the decimal point upgrades from the software vendors to operate on upgraded versions of operating systems; updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to DRS; and interface modules which are developed by the Vendor for interfacing the Software to other Software products. *[Note: this section to be negotiated..]*

37. Software Maintenance and Support Services

Vendor shall provide a replacement copy or correction service at no additional cost to DRS for any error, malfunction, or defect, if any, in the Vendor-supplied Software which, when used as delivered, fails to perform in accordance with Vendor's officially announced technical specifications or Vendor's proposal, and which DRS shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner which is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to DRS.

In addition, Vendor shall provide the following Services:

- 37.1. Telephone Support - Vendor will provide telephone support, toll-free in the United States, to DRS during business days and hours. Vendor's telephone service shall include but is not limited to the following services:

- 37.1.1. Assistance related to questions on the use of the subject Software;

- 37.1.2. Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
- 37.1.3. Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
- 37.1.4. Information on errors previously identified by DRS and reported to Vendor and detours to these where available; and
- 37.1.5. Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
- 37.2. Vendor's Software Bug List - Vendor shall provide DRS a copy of its current "Software Bug List" on a monthly basis, unless a different frequency of reporting is agreed to by the parties.
- 37.3. On-line Support - Vendor may execute on-line diagnostics from a remote Vendor location to assist in the identification and isolation of suspected Software errors or malfunctions.
- 37.4. Error and Malfunction Service - Within four (4) business hours of receiving oral or written notification by DRS of identified errors or malfunctions in the Software, Vendor will either:
 - 37.4.1. Provide DRS with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform DRS of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, or
 - 37.4.2. Provide DRS with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable, subject to DRS' approval, for correcting or working around the error or malfunction.
- 37.5. Maintenance Release Services - Vendor will provide error corrections and maintenance releases to the Software which have been developed by Vendor. Such releases shall be licensed to DRS pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform DRS of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.
- 37.6. On-Call Support - If a problem occurs which significantly impacts DRS' usage of the Licensed Software and remains unidentified or unresolved either by detour or permanent correction after DRS has taken the Vendor-prescribed action, Vendor will dispatch a representative to the system location during business days and hours, which representative must arrive within four (4) hours of DRS' call. Vendor will provide or make available:
 - 37.6.1. Advice and assistance in diagnosis and identification of errors or malfunctions in the Licensed Software.
 - 37.6.2. On-site consultation on correction or detour of identified errors or malfunctions.
 - 37.6.3. Advice and assistance on completion of form to report errors or malfunctions to Vendor as specified in the reporting procedure.
- 37.7. When Vendor performs Services pursuant to this Contract which require the use of DRS' computer system(s), DRS agrees to make it available at reasonable times and in reasonable time increments, and in no event will DRS charge the Vendor for such system use.

38. Software Documentation

- 38.1. Vendor will provide Software documentation at installation of this Software or as otherwise mutually agreed, in the form of the same number of manuals as licensed users of the Software or another mutually agreed number of manuals, adequate for use of Software ordered under the sections of this Contract. Manual upgrades will be provided on a no-charge basis through the Vendor's local sales and service office.
- 38.2. For all Vendor Software furnished to DRS within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to DRS, if requested, at no additional cost, sufficient documentation to permit DRS to maintain, modify or enhance such purchased or Licensed Software.
- 38.3. Vendor grants to DRS the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

39. Installation (Site) Security

While on DRS' premises, Vendor, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

40. Use of Purchaser's Property and Facilities

- 40.1. Any property of DRS furnished to the Vendor shall be used only for the performance of this Contract. DRS must provide reasonable space and adequate utilities, including telephone services, to the Vendor for installation and maintenance of the equipment with reasonable access to the premises.
- 40.2. The Vendor shall be responsible for any loss or damage to property of DRS which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices to ensure that the property will be returned to DRS in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage.
- 40.3. The Vendor shall surrender to DRS all property belonging to DRS upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or subcontractors.
- 40.4. Vendor shall ensure its employees, agents or subcontractors comply fully with all DRS regulations and policies establishing a weapon-, drug-, alcohol-, and smoke-free work place.

41. Vendor Commitments, Warranties, and Representations

- 41.1. Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due DRS under the terms of this Contract.
- 41.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
 - 41.2.1. Prices, discounts, and options committed to remain in force over a specified period of time;
 - 41.2.2. Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, services, or other products within the scope of this Contract;

- 41.2.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
- 41.2.4. Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
- 41.2.5. Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

42. Year 2000 Compliance Warranty

Vendor warrants that the Software and Equipment provided pursuant to this Contract is Year 2000 compliant. This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software and Equipment including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century. Failure to comply with Year 2000 requirements shall entitle DRS to a refund of the initial license fee as liquidated damages.

43. Physical Media Warranty

- 43.1. Vendor warrants to DRS that each licensed copy of the Licensed Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than ninety (90) calendar days after the date of Acceptance of the Software copy by DRS.
- 43.2. The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents, or subcontractors after the media has left Vendor's control in cases of theft, vandalism, fire, water, acts of God or other perils beyond the control of Vendor.
- 43.3. DRS shall be entitled to replacement by Vendor, at Vendor's expense including shipping and handling costs, of any Software copy provided by Vendor that does not comply with this warranty.

44. No Surreptitious Code Warranty

- 44.1. 30.1. Vendor warrants to DRS that no copy of the Licensed Software provided to DRS contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 44.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.
- 44.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

- 44.4. Vendor will defend DRS against any claim, and indemnify DRS against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

45. Protection of Purchaser's Confidential Information

- 45.1. Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or subcontractors requiring such information, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to subcontractors who have signed a written Contract expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.
- 45.2. This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by DRS to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

46. Subpoena

In the event that a subpoena, governmental rules and requirements or other legal process commenced by a third party, in any way concerning the Equipment, Software or Related Services provided pursuant to this Contract is served upon Vendor or DRS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and DRS further agree to cooperate with one another in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

CONTRACT TERMINATION

47. Termination for Default

- 47.1. If either DRS or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days subject to extension if reasonably necessary to cure providing the curing party is using due diligence or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.
- 47.2. In the event of termination of this contract by DRS, the remedy shall be the return of products and refund of the purchase price with the Vendor's total obligation being limited to the total sums received by the Vendor under the Contract.
- 47.3. If it is determined the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.
- 47.4. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

48. Termination for Convenience

- 48.1. When it is in the best interest of DRS, DRS' Contracting Officer may terminate this Contract, in whole or in part, by twenty (20) calendar days written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority, or Termination for Non-Allocation of Funds sections shall be deemed a Termination for Convenience but will not require such twenty (20) calendar days' notice.
- 48.2. If this Contract is so terminated, DRS is liable only for payments required by the terms of this Contract for Equipment, Software and Related Services received and accepted by DRS prior to the effective date of termination.

49. Termination for Withdrawal of Authority

In the event that the authority of DRS to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, DRS may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Equipment, Software and Related Services from a third party.

50. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, DRS will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. DRS agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to DRS in the event this section shall be exercised. This section shall not be construed so as to permit DRS to terminate this Contract in order to acquire similar Equipment, Software or Related Services from a third party.

51. Termination for Conflict of Interest

- 51.1. DRS may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:
- 51.1.1. Ethics in Public Service, chapter 42.52 RCW; or
 - 51.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.
- 51.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, DRS shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

52. Termination Procedure

- 52.1. Upon termination of this Contract, DRS, in addition to any other rights provided in this Contract, may require the Vendor to deliver to DRS any property or Equipment specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.
- 52.2. Unless otherwise provided herein, DRS shall pay to the Vendor the agreed-upon price, if separately stated, for the Equipment, Software or Services received and accepted by DRS: PROVIDED THAT, in no event shall DRS pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. DRS may withhold from any amounts due

the Vendor for such completed work or Services such sum as the DRS Contract Administrator determines to be necessary to protect DRS from potential loss or liability.

52.3. After receipt of a notice of termination, and except as otherwise directed by DRS, the Vendor shall:

- 52.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;
- 52.3.2. If termination is to the Equipment purchase sections of this Contract, then DRS shall place no further orders and Vendor shall accept no further orders for additional Equipment;
- 52.3.3. If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;
- 52.3.4. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DRS to the extent required, which approval or ratification shall be final for the purpose of this section;
- 52.3.5. Complete performance of such part of this Contract as shall not have been terminated by DRS;
- 52.3.6. Take such action as may be necessary, or as DRS may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which DRS has or may acquire an interest;
- 52.3.7. Transfer title, excluding licensed Software, to DRS and deliver in the manner, at the times, and to the extent directed by DRS Contract Administrator, any property which is required to be furnished to DRS; and
- 52.3.8. Provide written certification to DRS that the Vendor has surrendered to DRS all said property.

52.4. The Vendor shall pay the damages due DRS as the result of termination within thirty (30) calendar days of notice.

DISPUTES and REMEDIES

53. Disputes

- 53.1. In the event a bona fide dispute concerning a question of fact arises between the Vendor and DRS and it cannot be resolved between the parties with the aid of the DRS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 53.2. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) business days.
 - 53.2.1. Then, both parties shall have three (3) business days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) business days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.
 - 53.2.2. Within three (3) business days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) business days.
 - 53.2.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - 53.2.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel

member.

- 53.3. Both parties agree to be bound by the determination of the dispute resolution panel.
- 53.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- 53.5. The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.
- 53.6. If the subject of the dispute is the amount due and payable by DRS for maintenance services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute provided DRS pays Vendor the amount DRS, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

54. Attorneys' Fees and Costs

- 54.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 54.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

55. Non-exclusive Remedies

The remedies provided for in this Contract shall be limited to those specified under the terms and conditions of this contract.

56. Failure to Perform

If the Vendor or Customer fails to perform any substantial obligation under this Contract, the affected party shall give the other party written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice the non-performing party still has not performed, then DRS may withhold all moneys due and payable to Vendor or Vendor may discontinue service and support, without penalty to the other party DRS, until such Failure to Perform is cured or otherwise resolved.

57. Limitation of Liability

- 57.1. The parties agree that neither the Vendor nor DRS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages, retainages or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled OSHA/WISHA, Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

- 57.2. Neither the Vendor nor DRS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or DRS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DRS acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, DRS, or their respective subcontractors.
- 57.3. If delays are caused by a subcontractor without its fault or negligence, neither the Vendor nor the DRS shall be liable for damages for delays, unless the Equipment, Software or Services to be furnished by their subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or DRS to meet its required performance schedule.
- 57.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

CONTRACT ADMINISTRATION

58. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to Vendor at:	<i>[Vendor Name]</i> <i>Attention: [Name]</i> <i>[Street Address]</i> <i>[City]</i> <i>[State and Zip]</i> <i>[Phone and fax numbers]</i>
to Purchaser at:	State of Washington Department of Retirement Systems Attention: John Specht, Project Manager 6835 Capitol Blvd. (M.S. 48380) Olympia, WA 98504-8380 Voice (360) Fax (360) 753-5397

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

59. Section Headings, Incorporated Documents and Order of Precedence

- 59.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 59.2. Except for the applicable federal and state statutes, laws and regulations, the documents listed below are, by this reference, incorporated into this Contract as though fully set forth herein. In the event of

any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- 59.2.1. Applicable federal and state statutes, laws, and regulations;
- 59.2.2. Sections of this Contract 99-37;
- 59.2.3. Schedule A - Authorized Product and Price List, to this Contract;
- 59.2.4. Exhibit A - State of Washington Department of Retirement Systems Request For Proposal (RFP) for [Electronic Document Imaging Management System](#) dated [\[Date\]](#);
- 59.2.5. Exhibit B - Vendor's Response to the Purchaser, dated [\[Date\]](#), including all written information provided with Vendor's response;
- 59.2.6. The terms and conditions contained on DRS' purchase documents, if used; and
- 59.2.7. All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to DRS and used to effect the sale of Equipment to DRS, or purports the Equipment is fit for a particular purpose or attests to the Equipment's engineering level, operating condition, functions, capabilities, or merchantability.

60. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Vendor Commitments, Warranties and Representations understandings, contracts, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

61. Additional Services and Equipment

DRS and Vendor agree that additional Services, Software and/or Equipment, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services, Software and/or Equipment, pricing and additional terms and conditions as relevant. The additional Services, Software and/or Equipment shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

62. Authority for Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and the DRS. Only the DRS Contracting Officer or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of DRS.

63. Purchaser Contract Administrator

DRS shall appoint John Specht to be the DRS (Purchaser) Contract Administrator for this Contract and provide oversight of the activities conducted hereunder. The DRS Contract Administrator will manage this Contract on behalf of DRS and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract. DRS shall notify Vendor, in writing, when there is a new DRS Contract Administrator assigned to this Contract.

64. Vendor's Account Manager

The Vendor shall appoint [*Name*] who will be the Account Manager for DRS' account. The Vendor's Account Manager will be the principal point of contact for DRS concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

65. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

66. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

67. Subcontractors/Third Party Vendors

The Vendor may, with prior written permission from the DRS Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to DRS for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to hold DRS harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. DRS shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of the Patent And Copyright Indemnification sections of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification sections of this Contract shall apply to all Subcontractors.

68. Assignment

- 68.1. With the prior written consent of DRS, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, that such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DRS that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.
- 68.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, DRS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, that such assignment shall not operate to relieve DRS of any of its duties and obligations hereunder.

69. Publicity

The Vendor agrees to submit to DRS, all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein DRS' name is mentioned or language used from which the connection of DRS' name therewith may, in DRS' judgment, be inferred or implied. The Vendor

further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of DRS.

70. Review of Vendor's Records

- 70.1. The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.
- 70.2. 58.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by DRS' Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after the Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.
- 70.3. 58.3. The record retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 70.4. 58.4. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from DRS' review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

GENERAL

71. Patent and Copyright Indemnification Please note that this section should be made mutual

- 71.1. Vendor will, at its expense, defend or settle any claim against DRS that Equipment, Software, or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that DRS:
- 71.1.1. Promptly notifies Vendor in writing of the claim; and
- 71.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 71.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by DRS, except costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, DRS agrees to permit Vendor at its option and expense, either to procure for DRS the right to continue using the Equipment or to replace or modify the same so that they become noninfringing and functionally equivalent. If a court enjoins use of the Equipment and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Equipment and refund its depreciated value. No termination charges will be payable on such returned Equipment, and DRS will pay only those charges which were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over

said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Equipment has been installed less than one year, transportation to the initial installation site paid by DRS shall be refunded by Vendor.

71.3. Vendor has no liability for any claim of infringement arising from:

- 71.3.1. Vendor's compliance with any designs, specifications or instructions of DRS;
- 71.3.2. Modification of the Equipment or Software by DRS or a third party without the prior knowledge and approval of Vendor;
- 71.3.3. Use of the Equipment or Software in a way not specified by Vendor; or,
- 71.3.4. 59.3.4. Use of the Equipment with Equipment or Software not supplied by Vendor;
unless the claim arose against Vendor's Equipment, Software or Services independently of any of these specified actions.

72. Save Harmless Please note that this section should be made mutual

Vendor shall protect, indemnify and save DRS harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or subcontractors.

73. Insurance

- 73.1. Liability and Auto Insurance - Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the DRS Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:
 - 73.1.1. Public liability covering the risks of bodily injury, property damage and personal injury (including death);
 - 73.1.2. General Business Liability; and
 - 73.1.3. Automobile liability (owned or nonowned) covering the risks of public liability and property damage.
- 73.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for DRS pursuant to this section shall name DRS as an additional insured and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to DRS by such insurer.
- 73.3. Vendor shall furnish to DRS copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

74. Industrial Insurance Coverage

Prior to performing work under this Contract the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DRS will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any

Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

75. Licensing Standards

The Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

76. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold DRS harmless from all damages assessed against DRS as a result of the failure of the items furnished under this Contract to so comply.

77. UCC Applicability

- 77.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 77.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 77.3. Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

78. Antitrust Violations

Vendor and DRS recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to DRS any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to DRS resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

79. Compliance with Civil Rights Laws

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default sections, and the Vendor may be declared ineligible for further contracts with DRS. The Vendor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

80. Quiet Possession and Usage

Vendor warrants that DRS upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Equipment without suit, molestation, or interruption.

81. Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

82. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties hereto.

83. Treatment of Assets

- 83.1. Title to all property furnished by DRS shall remain in DRS. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in DRS pursuant to the section titled Title and Ownership of Equipment, Software and Other Work Products. As used in this section Treatment of Assets, if the “property” is the Vendor’s proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in DRS.
- 83.2. Any property of DRS furnished to the Vendor shall, unless otherwise provided herein or approved by DRS, be used only for the performance of this Contract.
- 83.3. The Vendor shall be responsible for any loss or damage to property of DRS which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.
- 83.4. Upon loss, or destruction of, or damage to any DRS property, the Vendor shall notify DRS thereof and shall take all reasonable steps to protect that property from further damage.
- 83.5. The Vendor shall surrender to DRS all property of DRS prior to settlement upon completion, termination, or cancellation of this Contract.
- 83.6. All reference to the Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

84. Vendor’s Proprietary Information

Vendor acknowledges that DRS is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, DRS shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, DRS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, DRS will release the requested information on the date specified.

CONTRACT EXECUTION

85. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

86. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

APPROVED

State of Washington

Department of Retirement Systems

APPROVED

[Vendors Name]

SIGNATURE

DATE

SIGNATURE

DATE

NAME

TITLE

NAME

TITLE

APPROVED AS TO FORM:

SIGNATURE

DATE

Ann Cox, AAG - Assistant Attorney General

NAME

TITLE

Schedule A

Authorized Product and Price List

Schedule A
Authorized Product and Price List
as of *[Date]*
for
Contract No. 99 - 37
with
[Vendor]

Vendors are (Vendor is) authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract.

[List information required to be included by the Vendor, e.g., Product Category, Products Name, Product Description, Price, Training fees, Installation fees, Upgrade fees, Maintenance Fees, etc.]

This Schedule may only be modified in writing by DRS Contract Administrator.

Schedule B

Statement of Work and Deliverables

1. **PROJECT PURPOSE:** The purpose of the project is to acquire an Electronic Document Image Management System for the Washington State Department of Retirement Systems.
2. **OBJECTIVES:** The objective of this contract is to enable the staff to improve quality and timeliness of customer services; provide for and improve disaster recovery for and safety of mission-critical documents through electronic storage; reduce reliance on paper flow for the large volume of business information; manage projected increases in customer volumes and services; facilitate providing new customer services (e.g., Web-enable imaging and document management; streamline DRS processes through imaging, document management, and workflow.
3. **PROJECT MANAGEMENT AND ORGANIZATION:** The Contractor will report to DRS' Contract Manager. The Contract Manager or his/her designee will review and approve all deliverables.
4. **DELIVERABLES:**
 - A. Initialization
General Project Plans & Schedule(s) of Deliverables Developed & Approved
 - B. Phase 1: Pilot
Pilot Implementation Plan Developed and Approved
Pilot Hardware Installed and Tested and Results Documented
Pilot Software Installed and Operational
Network Testing Completed and Documented
System and Network Tuning Completed
Baseline Measurements for Current System and Network Performance Documented
Draft Documentation of System Operation and User Procedures for Pilot Completed
Business Process Evaluation and Workflow for Pilot Developed and Approved
Training Of Users and Support Personnel Developed, Completed and Approved
Acceptance Testing Completed
Pilot Successfully Completed
Review and Decision to Continue to Phase 2
 - C. Phase 2: Full Implementation of Basic Imaging and Work-flow
Installation Plan Developed and Approved

Implementation Plan Completed and Approved

Testing Strategies & Tests (Functional, Unity, System, User) Developed, Approved and Implemented

Design, Plan, Implement Document Management Library Component(s) (check-in, check-out, version control as well as forms redesign)

Additional Hardware Installed, Tested and Operational

Additional Software Installed, Tested and Operational

System and Network Tuning Completed

System and Network Performance Expectations Documented

System and User Documentation Completed and Approved

Training of Users and Support Personnel Developed, Completed and Approved

Acceptance Testing Completed

Review System Performance for Acceptable Levels

Full Implementation Successfully Completed

D. Phases 3 through X: Customized Work-flows

Business Process Evaluated, Reengineering Completed and Work-flows Developed, Reviewed and Approved for Deployment/Rollout

Training of Users & Support Personnel Developed, Completed and Approved

Change Management (tentative)

Acceptance Testing Completed

Full Implementation Successfully Completed

5. **SCHEDULE:** The schedule for this contract will be from date of execution through June 30, 2000 for Phases 1 and 2. For Phases 3 through X, three (3) one-year extensions may be negotiated at the option of DRS

6. **COSTS:**

7. **BILLINGS:** Upon completion of work and acceptance of each deliverable by the Contract Manger, the Vendor may invoice DRS for the associated amount specified in their Response (Exhibit B), or negotiated by Deliverable.